

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 96-3106

United States of America,

Appellee,

v.

Lionel Scott Johnson,

Appellant.

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Appeal from the United States
District Court for the
Western District of Missouri.

[UNPUBLISHED]

Submitted: February 28, 1997

Filed: April 1, 1997

Before McMILLIAN, MAGILL, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

PER CURIAM.

Lionel Scott Johnson pleaded guilty to knowingly transporting a person in interstate commerce for the purpose of engaging in sexual activity, in violation of 18 U.S.C. § 2421. The district court¹ sentenced him to 60 months imprisonment--to be consecutive to an undischarged state sentence Johnson was currently serving in Iowa--and three years supervised release. On appeal, Johnson's appointed counsel moved to withdraw and filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967), with the stated issue

¹The Honorable Dean Whipple, United States District Judge for the Western District of Missouri.

that the court erred in refusing to credit Johnson for time served in state prison since the filing of the federal indictment. In a pro se supplemental brief, Johnson seeks to withdraw his guilty plea, stating that his plea was not knowing and voluntary.

Having reviewed the record in accordance with Penson v. Ohio, 488 U.S. 75, 80 (1988), and finding no nonfrivolous issues for appeal, we grant counsel leave to withdraw and deny Johnson's motion for appointment of new counsel. We conclude the district court did not err in refusing to credit Johnson for time served. See United States v. Iversen, 90 F.3d 1340, 1344-45 (8th Cir. 1996) (district court does not have authority to credit defendant for time served; such claim should be presented in first instance to Bureau of Prisons). We do not consider Johnson's claim that his guilty plea was not knowing and voluntary, as such a claim must first be presented to the district court. See United States v. Murphy, 899 F.2d 714, 716 (8th Cir. 1990).

Accordingly, the judgment of the district court is affirmed.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.